

The Rules are based partly on the Federal Rules of Civil Procedure for judicial proceedings, partly on the rules of procedure of various state and federal agencies and partly on the independent thinking of the Technical Advisory Committee and the Board within the framework laid down by the procedural sections of the Environmental Protection Act, all as modified in response to suggestions made by the public. The Rules are in five parts. The first part is a general catch-all section dealing, among other things, with public information and with the conduct of Board meetings. Part II deals with rule-making and other non-adjudicative proceedings. Part III prescribes procedures for enforcement proceedings, Part IV for variances and Part V for permits. Part VI prescribes two fundamental canons of ethics to govern Board Members.

Part I.

The reason for the detail with which Rule 104 provides for the form of papers submitted to the Board is to avoid repeated inquiries from attorneys or others wishing to file papers as to the correct procedure. The requirement that 10 copies be filed is imposed in view of the necessity, in the absence of such a requirement, for the Board itself to reproduce all documents filed for circulation to each Board Member as well as to the Board's own files.

Section 105 prescribes in detail the method to be used for computing dates on which notice must be given and other acts taken in accordance with the Act and these Rules. As with many such technical provisions, it is less important what the rule is than that some reasonably clear rule be stated.

Section 106 makes clear that any person may appear in his own behalf and that any corporation or other business entity may appear by any authorized representative. The presence of an attorney is permitted but not required.

Section 107 attempts to deal with the complicated subject of public information in accord with the requirements of the Environmental Protection Act. It requires that virtually all information received or produced by members of the Board in regard to the Board's business, except internal Board communications, be made a matter of record in the Board's official files, and it prescribes a restrictive procedure for the identification of material in those files which may be withheld from public disclosure. Neither the Committee nor the Board felt able at this point to attempt to define what classes of data might be eligible for treatment as "confidential" under the statute. Accordingly, the definition of confidential data will be worked out on a case-by-case basis by the Board. A provision for copying fees in Rule 107 (e) is based on our own estimate of the actual cost to the Board of reproducing the original document.

Rule 109 essentially incorporates the notice requirements of the Environmental Protection Act and of the Public Meetings Act in regard to Board meetings, making clear, in accord with the overall policy of these rules, that wherever possible the Board will satisfy its requirements of notice by the mailing of a newsletter or of special notice to everyone on the mailing list. No attempt is made in this rule to detail the situations in which the law permits the Board to hold executive sessions. The Rule does contain a statement of the Board's policy to make all important decisions at meetings open to the public. The Public Meetings Act, however, does permit executive sessions on certain limited types of matters, and we have requested an opinion from the Attorney General as to the scope of that authority. In particular, it may be desirable for the Board, like any other tribunal, to hold preliminary discussions of the merits of adjudicative cases in private, since public discussion of such matters prior to an actual decision might tend to encourage improper attempts to influence the Board's decision.

Rule 110 specifies the procedure to be followed by the Board upon receipt of an informal complaint about a particular pollution source. This rule reflects the statutory separation of the powers of prosecution on the one hand and decision on the other and indicates that the Board itself has no power to institute proceedings against individual polluters.

Part II.

The rules in this part detail the procedure for the proposal of new regulations, for the authorization of a hearing, and for hearing procedures regarding rule-making proposals. Particular attention is called to Rule 203 (b), which requires the proponent of a proposed regulation to prepare and submit a statement of the reasons supporting his proposal. This statement should serve essentially the same purpose in rule-making proceedings that is served by the complaint in an individual pollution case, namely, to apprise other interested persons of the basis for the proposal in order to afford a meaningful opportunity for evaluation. Similarly, the proponent will be expected to support his proposed rule with testimony or other evidence at public hearing. Although the Board itself has the obligation to propose regulations on its own, its limited staff will require the Board, in many cases, to act as arbiter on the basis of evidence presented by others in rule-making as well as in adjudicative proceedings.

Rule 205 requires certain hearings to be held within 60 days after the receipt of the proposal in order to eliminate undue delay on the part of the Board.

Rule 206 (a) permits the hearing officer to require the submission of written expert testimony in advance of the hearing. The reason for this provision is to facilitate cross-examination of experts at the hearing itself. An alternative means of achieving the same goal, at the discretion of the hearing officer, is to require witnesses who have not submitted prior written testimony to attend a later session of the hearing for cross-examination purposes.

Rule 212 requires the Board to file a written opinion explaining its reasons for the adoption of any new or revised regulations. Such an opinion serves a number of purposes, such as informing the public as to the reasons for the decision, requiring the attention of Board members to the facts in the record and building a case to support the legality of such regulations in the event of a future court challenge.

Rule 213, which provides for the conduct of other types of non-adjudicative hearings by the Board, will apply among other things to exploratory hearings held on substantive subjects as to which no specific regulation has yet been proposed. Such a hearing would facilitate the gathering of information on which the Board can base an intelligent proposed regulation. We were asked to specify what additional kinds of hearings might be held under this provision. At this early stage in the Board's existence we are unable to do so and prefer to retain the flexibility afforded by the statute, which allows us to call new kinds of hearings without first amending the regulations.

Part III.

The rules in this part specify the contents of and the means of serving complaints in proceedings against alleged polluters, the procedures for authorization of hearing and for notice of hearing, and rules for the conduct of hearings and pre-trial proceedings. Rule 307, as in the case of certain rule-making proceedings, requires adjudicative hearings to be set no later than 60 days after the filing of the complaint.

Rules 308 and 315 essentially spell out the relationship between the hearing officer and the Board. The hearing officer, without interference by the Board, is to conduct the hearing and pre-trial proceedings and to pass on all motions not dealing with the merits of the case. Interlocutory appeals from the decisions of the hearing officer on such motions are forbidden in the interest of conducting an expeditious and orderly proceeding. Provision is made for the hearing officer to obtain a Board ruling on important questions that arise prior to the conclusion of the hearing by certification, but such a procedure is intended to be rarely invoked. Any motion to dismiss on the merits or for failure to state a claim or for want of jurisdiction can be decided only by the Board, and under Rule 320 (c) the hearing officer is required to admit any evidence whose admissibility depends upon an arguable interpretation of substantive law, in order once again that the merits of the case be decided only by the Board itself.

Special appearances to contest jurisdiction are allowed by Rule 308 (j).

The hearing officer, under Rule 309, is given broad power to consolidate or sever claims or to add parties in the interest of convenience. Intervention will be allowed under Rule 310 without the necessity of proving that the intervenor suffers an injury distinct from that of the population as a whole. However, the hearing officer may refuse a petition for intervention where such action is necessary in order to assure an orderly and expeditious hearing.

Rule 312 authorizes pre-hearing conferences largely for the simplification of issues and not principally as a medium of settling cases. The hearing officer himself has no authority to settle a case, and proposed Rule 333 requires the approval of the Board for settlement or compromise of any case pending before the Board. If the parties agree on a settlement, a written statement of the reasons for the agreement should be submitted to the Board.

Rule 313 provides for limited discovery in order to minimize the element of surprise at trial and to facilitate the development of a complete record. Recognizing that discovery procedures and litigation over the availability of such procedures have at times proved a ready instrument for

delay of court actions, the Board proposes to delegate wide discretion to the hearing officer to determine when discovery is appropriate. Consequently, the complicated provisions of the Federal Civil Rules regarding discovery, which have served largely to promote further litigation over discovery procedures, are not included in these Rules.

Rule 322 provides a limited opportunity for the Board or the hearing officer to view the premises involved in an individual enforcement case. Although the value of such a viewing to Board members actually participating may be considerable, the impact of a viewing is largely subjective. Consequently, the Board thought it desirable to allow any party a veto over any viewing by less than the entire Board since the results of the viewing do not appear in the written record.

Rule 330 permits the parties to file written briefs and, with Board permission, to make oral arguments before the Board after the close of a hearing. In order to encourage individual Board members to make independent study of the transcript and briefs, no provision is made in these rules for recommended findings or conclusions from the hearing officer at this time.

Part IV.

This part prescribes variance procedure, largely by incorporating, to the extent applicable, the procedures for enforcement hearings in Part III. There are, however, significant procedural differences between the two kinds of cases. For example, Rule 401 requires simultaneous filing of a variance petition with the Agency and with the Board in order that the Board may be apprised of the pending petition at the outset of the running of the period during which the Board must decide a variance case.

Although the statute does not require a hearing in every variance case, Rule 405 (b) makes clear that the Board will not grant any variance petition without adequate proof by the petitioner that compliance with the regulation or law from which variance is sought would impose an arbitrary or unreasonable hardship. This means that a hearing will be required in the bulk of variance cases in order to help ascertain the truth of matters alleged in the petition, even if there is no objection filed to the grant of the variance. In some cases, however, affidavits may suffice, and the equivalent of summary judgment may be granted.

Rule 406 provides that a request for a continuance by the petitioner for a variance constitutes a waiver of the right to a decision within 90 days. Rights given by statute, like such constitutional rights as trial by jury, may be waived. We cannot permit a litigant to obtain an automatic variance by delay which he brings about by his own action.

Special provision is made in Rule 409 regarding petitions for variance from a regulation within 20 days of its effective date in accordance with the statutory provision that the filing of such a petition will stay enforcement of the new regulation during the pendency of the variance petition before the Board.

Part V.

Rule 502 provides for the contents of a petition contesting the denial of a permit by the Environmental Protection Agency and provides that Board proceedings to review such denial shall be conducted in accordance with the rules for enforcement cases in Part III. Rule 503 provides a procedure whereby any person may challenge the Agency's grant of a permit on the ground that the Agency acted in violation of the law or regulations in granting the permit or may seek a cease and desist order against the activity described in the permit on the ground that it would cause a violation of the Act, of the regulations, or of a Board order. These provisions are supported by the statutory right of any person to file a complaint against anyone---including the Agency--allegedly violating or threatening to violate the law or the regulations.

Rule 504 provides a special procedure for the nuclear facilities permits required by Title VIA. of the Environmental Protection Act. The Board has not yet devised a format for the environmental feasibility report required to be filed by the statute and by Rule 504 (3). It is the implication of the proposed rule that this feasibility report will entail something more than the description of the facility and of contaminant emissions and methods for their control which are required by subsections 1 and 2 of the same rule.

Part VI.

Rule 6-1 spells out the Board's present conception of the proper interpretation of the statutory requirement of full financial disclosure by Board members. It is the Board's view that the filing of conflict of interest statements by Board members on their appointment in July 1970, as required by the Governor's Ethics Code, is not sufficient to satisfy the additional requirement of the Environmental Protection Act. Specifically, what is needed in addition is a full statement of income, of gifts and of intangible assets and real property in order that the public may determine for itself whether or not a Board member's outside connections create for him a conflict of interest. The rule provides that such a statement will be made annually and will be available for public inspection at the Department of Personnel.

Rule 602 attempts to limit contacts between Board Members or staff and the public outside of formal Board proceedings. As in the case of judicial proceedings, it is imperative that decisions in cases involving individual pollution sources be based solely upon evidence which is properly a part of the formal record. Somewhat different considerations apply to rule-making proceedings because of the wide ranging nature of the inquiry and because such proceedings are not typically of an adversary nature. Consequently, in rule-making matters, contacts between Board members and others outside the formal record are not forbidden. However, Board members are admonished to make every reasonable effort to make the results of such informal contacts a part of the formal record in order that information on which the Board relies can be subjected to possible rebuttal.

A great many suggestions for amending the proposed rules were made at the public hearings. A number of these suggestions have been adopted, and explanations of those changes can be found in explanatory statements issued by the Board on September 25 and by the Chairman October 8 when the final amendments were made. The suggestions that were not adopted are too numerous to be discussed individually here. Responses to many of them can be found in the hearing transcripts.

One category of criticisms, however, deserves special comment. A witness on behalf of the Illinois Manufacturers Association and the Chicago Association of Commerce and Industry repeatedly argued that the Board cannot prescribe by rule procedures which have not been prescribed by the statute itself. He argued, for example, that the Board had no authority to permit cross-examination of witnesses by members of the public, to permit intervention, or even to give notice to persons not specified in the statute. This last suggestion shows the weakness of the argument. The position taken equally would mean that the Board lacks power to prescribe discovery, prehearing conferences, rules of evidence, or any of the myriad procedural details that could not be provided by a General Assembly with many other things to do. It would deprive of all significance the explicit statutory authority, in section 26 of the Environmental Protection Act, for the adoption of procedural rules by the Board. The General Assembly's silence on specific issues such as intervention is to be interpreted as leaving the issue to the Board to decide under the general delegation of rule-making authority in section 26. As the Attorney General argued in response to the IMA's position, when the General Assembly wanted to limit an otherwise broad grant of rule-making authority to the Board it said so explicitly, as in section 27, which expressly denied the Board power to establish money charges for the emission of air or water contaminants. The IMA's position is wholly without merit. The provisions of the Rules here in question are supported by the authority of section 26.

I concur:

David P. Cyrille
Robert D. Duff
James P. [unclear]
John D. [unclear]
Samuel K. [unclear]

I dissent:

I, Regina E. Ryan, certify that the Board has approved the above Opinion this 8 day of October, 1970.

Regina E. Ryan
Regina E. Ryan
Clerk of the Board

ILLINOIS POLLUTION CONTROL BOARD

MINUTES OF REGULAR MEETING
OCTOBER 8, 1970, ROOM 212, CAPITOL BUILDING, SPRINGFIELD, ILL.

The Board first approved, with typographical changes, minutes of Board Meetings held August 31, September 2, 4, 14 and 16. Next, with Mr. Lawton taking no part in the decision, the Board rejected by a 4 to 0 vote motions to dismiss the several cases filed against the North Shore Sanitary District, ##70-7, 70-12, 70-13, and 70-14. The Board held in #70-7, League of Women Voters v. North Shore Sanitary District, in a opinion by Mr. Currie, that the complaint was not duplicitous despite the pendency of a court action by the Attorney General against the Sanitary District for causing pollution of Lake Michigan. The reason for the ban of duplicitous complaints, Mr. Currie said, was not the fear on one complaint before the Board, it was the fear of many. "In my view," he said, "it would subvert the entire scheme of the statute, which was that this Board would be the primary tribunal in pollution cases, if the mere pendency of a suit in court were to oust this Board of jurisdiction." Moreover, he added, the Attorney General's action did not even arise under the same law as the complaint pending before the Board.

In ##70-12, 70-13, and 70-14, Facktor, Winston, and Brown v. North Shore Sanitary District it was argued that the complaints were frivolous because the relief sought included the closing of a sewage treatment plant and such relief could not be seriously considered by the Board. However, the opinion by Mr. Currie concluded, the complaint alleged a serious violation of the pollution laws; it was up to the Board what relief to grant; the complaint had been drafted without benefit of counsel; and leave to amend was granted. Other grounds for dismissal in ##12, 13, and 14 were similarly found wanting. Mr. Kissel added that the pendency of the League of Women Voters case did not render the other complaints against the North Shore Sanitary District duplicitous because while the League case was concerned with water pollution of Lake Michigan the other cases principally concerned air pollution from the Clavey Road Sewage Treatment Plant. Mr. Currie agreed to modify his opinion in the Facktor case to incorporate Mr. Kissel's suggestion, and both opinions as amended were approved by the Board. Mr. Currie appointed Mr. Kissel hearing officer in ##12, 13, and 14.

Mr. Kissel asked for guidance from other Board Members as to the question of consolidation of the various complaints against the North Shore Sanitary District. Agreeing that the question of consolidation was one within the discretion of the hearing officer, Mr. Aldrich, Mr. Dumelle and Mr. Currie all expressed agreement with Mr. Kissel that it would be desirable to consolidate these cases, in order, in accordance with the purposes of the Environmental Protection Act, that all environmental aspects of a pollution problem, whether concerned with air or with water, be considered in a unified proceeding.

The Board then unanimously authorized hearings in #70-19, Ozark-Mahoning Co. v. EPA, and in #70-20, Deere & Co. v. EPA. Both are variance requests. Ozark-Mahoning seeks permission to emit particulate air pollutants in excess of the regulation limitations during the time required to install control equipment on its fluorspar processing plant in Hardin County, and Deere seeks permission to conduct open burning on a single day for purposes of fire-fighting instruction at its plant near Moline. Mr. Currie observed that although the statute does not require a hearing in every variance case the procedural rules about to be adopted by the Board require a hearing unless it is clear to the Board from the papers filed in support of the variance petition that the variance clearly must be granted or denied. So far, he said, the Board had held hearings in every variance case, and he thought this was a good practice. Everyone is more comfortable, he said, when there is an opportunity for anyone interested to come in and spread the facts out on the record. He also pointed out that the Ozark-Mahoning case seemed to involve a long-standing operation that may have been subject to the particulate regulations when they were adopted in 1967. He further observed that, although the statute does not require the Board to vote on whether or not to authorize a hearing until after 21 days have passed, he thought it advisable, if a hearing seemed necessary, to authorize it as early as possible in order to make sure that the Board decided the case as expeditiously as possible and within the 90 days during which the Board is required to pass on the petition.

The Board then unanimously approved a motion by Mr. Kissel in #R70-1 to repeal all regulations providing for exemption of local political subdivisions from the air or water pollution laws and regulations and unanimously adopted an opinion prepared by Mr. Kissel explaining the reasons for the Board's action. These provisions, Mr. Kissel explained, were obsolete

because the Environmental Protection Act has state wide application and makes no provision for local exemptions. The Board then unanimously voted to repeal regulations SWB-3 and SWB-16. SWB-3 established procedural rules for the Sanitary Water Board and SWB-16 adopted a common seal for the Sanitary Water Board. Both these regulations were obsolete since the Sanitary Water Board has been abolished.

In #R70-4, the procedural rules for the Board, the Board first unanimously approved several amendments proposed by Mr. Currie to the revised proposal. A copy of the amendments is attached to these minutes. Apart from minor typographical changes, these amendments relate to discovery to ex parte contacts, and to written testimony. The discovery amendment makes clear that only in extraordinary circumstances are depositions to be used directly as evidence, and the Board agreed with Mr. Kissel that the power to permit depositions to be used as evidence would be only sparingly invoked. Another amendment made clear that persons submitting written statements in adjudicatory hearings must submit to cross-examination. The final amendment made clear that the limitation on ex parte contacts did not forbid such administrative contacts as would be proper for judicial officers. Mr. Currie explained that he had chosen the word "administrative" rather than "procedural" to describe permissible contacts in order to stress that only the most petty and ministerial of matters and not all those characterized as procedural in the sense of being included in our procedural rules could be handled in an ex parte manner.

Mr. Dumelle then asked the Board to delete from Rule 602 (a) the prohibition on ex parte contacts concerning individual pollution sources that might become, but were not yet, subjects of proceedings before the Board. The rule as written, he said, might preclude the Board from touring factories or sewage treatment plants in order to gather information about processes and problems which the Board sorely needed. Mr. Kissel suggested that Mr. Dumelle's objection might be cured by writing a reasonableness requirement into the rule. Mr. Currie said that he was in sympathy with Mr. Dumelle's suggestion, but he wanted the rules to make clear that the Board would not go out and obtain facts about individual pollution sources from informal contacts and thereby pre-judge cases. Mr. Currie then proposed and the Board unanimously adopted the following language: "Ex parte contacts with respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to possible rule-making proceedings,

but caution shall be exercised by Board Members and employees to avoid pre-judging the merits of any potential individual case". Appropriate connecting language to accord with this amendment was also approved. Mr. Charles Pardee then asked whether the Board really wanted papers filed to be stapled in the upper right hand corner. Mr. Currie said that he found such fastening made papers awkward to handle, and the Board unanimously amended the proposed rule to refer to the upper left hand corner.

Mr. Lawton then moved and Mr. Kissel seconded that the proposed rules as amended be adopted, and the motion passed unanimously. Mr. Dumelle, noting that procedural rules were essential, urged the Board to remain open to suggestions for simplifying the rules in order to avoid frightening laymen away from approaching the Board. Mr. Currie said that the Board would welcome suggestions for further amendments to the procedural rules at any time. At Mr. Currie's request the Board then unanimously voted to certify that an emergency existed requiring that the procedural rules go into effect immediately upon their filing with the Secretary of State because the rules were urgently needed for the guidance of parties before the Board in pending cases. In support of this position Mr. Kissel summarized the numerous cases pending on the docket and scheduled for early hearing. Mr. Currie noted that he had prepared a written opinion to explain the procedural rules, but that because it had not yet been circulated to Board Members he would ask its approval at the Board meeting October 14th in Chicago.

Mr. Kissel then reported that he had held a pre-hearing conference in #70-4, EPA v. Commonwealth Edison Co., which alleges a violation of the air pollution regulations at the power plant in Joliet, Illinois. The hearing had already been once postponed due to conflict with the federal thermal pollution workshop, and Mr. Kissel said it probably would have to be postponed again until about November 23, because the Agency had recently filed a long series of interregatories which there was not adequate time to answer before the scheduled hearing date. He added that Edison's anticipated motion to dismiss would be considered as a substantive defense at the time of the hearing. He stressed that he believed the hearing had been delayed much too long in this case. He hoped that other hearing officers would not be confronted with similar problems in the future, and that in the future the Board would not be confronted with late requests for discovery. Mr. Currie commented that Mr. Kissel's handling of this difficult case had been excellent and observed that it was imperative that the Board not get bogged down in delays, that discovery motions not be made at the last

minute, and that people show up for the hearing dates. The procedural rules, he said, include a very strict requirement for the granting of continuances. The courts, he said, are too slow and continue to get slower. The Board, he said, was not going to fall into that particular misfortune; Attorneys would have to get used to the idea that the Board meant to get its job done expeditiously. Mr. Kissel added that the new procedural rules require a hearing to be scheduled within sixty days after a complaint is filed.

Mr. Currie pointed out that the Board had recently held two hearings on the revision of the existing air-pollution episode regulations which had been in force since the preceding Spring. Mr. Lawton, hearing officer in that proceeding, said that an additional hearing would be held on this subject in Edwardsville at 9:00 October 28 at Southern Illinois University. Mr. Currie pointed out an omission of additional proceedings on October 28th from the last Newsletter sent out by the Board. A Board Meeting is scheduled for 10:00 and a hearing on compliance dates for secondary treatment along the Mississippi River for 2 p.m. that same day and place. Mr. Currie also added that he was preparing a revised draft of the proposed amended episode regulations, which would be available in advance of the October 28 hearing.

Mr. Kissel then reported on hearings he had held in Chicago on the problem of thermal pollution of Lake Michigan, saying that additional hearings had been scheduled on that subject for November 4 and 5 and suggesting that those hearings be in a format which would permit a dialogue among scientists holding conflicting points of view. Mr. Currie added that Board Members had further pursued the subject of thermal pollution as official participants in the Federal-State Lake Michigan Enforcement Conference recently held in Chicago. He noted that the Chairman of the Conference had stated his intention of reconvening the Conference after a week's opportunity for study in order to make a formal recommendation as to what thermal discharges, if any, ought to be permitted. He stated that in his view the Board would be unable to make any recommendation for a proposed standard until after the completion of the Board's own hearings on thermal pollution in November. Mr. Kissel agreed and urged that the Federal Water Quality Administration propose a standard for consideration by the States on the basis of the five-day hearings which FWQA had conducted. Mr. Currie said he would ask FWQA for such a recommendation and added that FWQA had promised to make its experts available as witnesses in the November hearings.

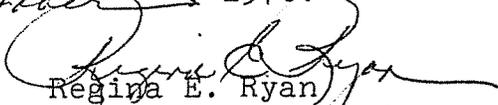
Mr. Kissel noted that suggestions made by Board Members at the federal conference, if adopted, would serve greatly to improve the procedures of that conference. Mr. Dumelle suggested that the Board might consider adopting as a partial position Commonwealth Edison's proposal of a moratorium after the construction of plants presently under construction. However, he dropped the suggestion after hearing the views of other Board Members who preferred to await the outcome of further Board hearings.

Mr. Kissel observed that Commonwealth Edison Co. had recently filed with the Board a request for a Title VI A permit to permit the operation of a new nuclear generating facility, the third such unit at the Dresden Plant. Mr. Kissel noted that he had been appointed hearing officer and that he would set a hearing on this matter in the near future.

Mr. Dumelle then asked, in connection with the status report on court cases filed by the Southern Division of the Attorney General's office, whether the Attorney General wanted any guidance from the Board as to cases on that list. He noted that a number of these cases which had been filed sometime ago were presently in abeyance waiting further direction from the Sanitary Water Board, which was no longer in existence. Mr. Fred Hopper of the Attorney General's office reported that his office was proceeding as expeditiously as possible to resolve those cases and that to his knowledge there was no action the Board should take with regard to them. Mr. Kissel commended Mr. Hopper for submitting status reports and offered to write a letter requesting that similar reports be filed regarding cases in the northern part of the state. Mr. Currie said this would be the second such letter and that this was the third time the issue had come up in a public Board meeting.

Mr. Lawton asked that the procedural rules be given wide dissemination. Mr. Currie said 2000 copies were being made and would be distributed.

I, Regina E. Ryan, certify that the Board has approved the above minutes this 28th day of October, 1970.


Regina E. Ryan
Clerk of the Board

10-16-70

Pursuant to the authority conferred by Section 26 of the Environmental Protection Act, approved June 26, 1970, the Pollution Control Board hereby adopts the above Procedural Rules.

I, David P. Currie, certify that the Pollution Control Board adopted the above Procedural Rules the 16th day of October, 1970.

David P. Currie
Chairman

State of Illinois Pollution Control Board

Procedural Rules



State of Illinois

POLLUTION CONTROL BOARD

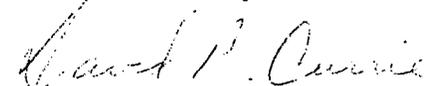
309 West Washington Street, Suite 300

CERTIFICATION

I, David P. Currie, Chairman of the Pollution Control Board, State of Illinois, hereby certify that the attached Rules and Regulations, establishing procedural rules for the Board, are true, complete and correct copies of Pages 1-43, promulgated pursuant to the Environmental Protection Act, H.B. 3788, 76th G.A., effective July 1, 1970, and that they are filed with the Index Division of the Office of Secretary of State as required by "An Act concerning administrative rules," approved June 14, 1951, as amended.

Pursuant to the provisions of "An Act concerning administrative rules," approved June 14, 1951, as amended, I further certify that an emergency exists requiring that the attached Rules and Regulations become effective immediately upon filing with the Secretary of State. The specific reason for the emergency is that these Procedural Rules are needed for the guidance of the Board and of persons appearing before the Board in numerous rule making and adjudicative proceedings already pending before the Board and scheduled for prompt hearing.

Dated this 16th day of October, 1970.



David P. Currie
Chairman, Pollution Control Board
State of Illinois

PROCEDURAL RULES

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**State of Illinois
Pollution Control Board**

Procedural Rules

ILLINOIS POLLUTION CONTROL BOARD
RULES AND REGULATIONS

(May be cited as PCB Regs.)

Ch. 1: PROCEDURAL RULES
(Adopted October 8, 1970)

PART I: GENERAL RULES

101 Applicability. The Rules in Parts I-VII of this Chapter govern the practices and procedures of the Pollution Control Board, and all proceedings conducted by the Board.

102 Definitions. As used in Parts I-VII of this Chapter, the following terms shall have the meanings specified:

(a) the term "Act" means the Environmental Protection Act, *and all amendments thereto;*

(b) the term "Board" means the Pollution Control Board;

(c) the term "Agency" means the Environmental Protection Agency;

(d) the term "Institute" means the Illinois Institute for Environmental Quality;

(e) the term "Hearing Officer" means a person duly qualified and designated as a hearing officer under Section 5 (a) of the Act;

(f) the term "Clerk" means the Clerk of the Board

(g) the term "person" means any person defined in Section 3 (i) of the Act;

(h) *Chairman*

(i) *NPDES*

(j) *NPDES permit*

(h) the term "Chairman" means the chairman of the Pollution Control Board.

103 Filing. Documents and requests permitted or required to be filed with the Board or its clerk shall be addressed to and mailed to or filed with the Clerk, Pollution Control Board, 309 West Washington Street, Chicago, Illinois 60606. *at its office address* The office of the Clerk is open for filing and inspection and copying of documents from 9 a.m. to 5 p.m., Monday through Friday, except on national and State legal holidays.

104 Form of Documents. (a) Documents shall clearly show the file or docket number and the title of the proceeding in connection with which they are filed.

(b) Except as otherwise provided, ten copies of all documents including complaints, motions, petitions, and notices of appeal shall be filed with the Clerk.

(c) Documents shall be typewritten or reproduced from typewritten copy on unglazed white paper of greater than 12 pound weight and measuring 8" x 10½" or 8½" x 11". Reproductions may be made by carbon or electrostatic copying machine or any other process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1½ inches and the right margin at least one inch.

(d) One copy of each document filed shall be signed by the party or by his authorized representative or attorney.

105 Computation of Time. Computation of any period of time prescribed by these rules or the Act shall begin with the first business day following the day on which the act, event or development initiating such period of time occurs, and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. Where the period of time is five days or less, Saturdays, Sundays and legal holidays shall be excluded in the computation of time.

Notice requirements shall be construed to mean notice received, but proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received.

106 Appearances. (a) Any person entitled to participate in Board proceedings may appear as follows:

(1) A natural person may appear in his own behalf or by an attorney at law licensed to practice in the State of Illinois, or both.

(2) A business, nonprofit, or government organization may appear by any bonafide officer, employee, or representative, or may be represented by an attorney licensed to practice in the State of Illinois, or both.

(b) Attorneys not licensed to practice in the State of Illinois may appear on motion.

(c) An attorney appearing in a representative capacity shall file a written notice of appearance on a form prescribed by the Board.

107 Public Information. (a) The Board shall maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction, except that internal communications of the Board shall be filed only at the request of a Board member. Without limiting the generality of the foregoing, the files shall include, among other things: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions; proposed and adopted regulations; communications to or from the Board or any Board member; newsletter and other Board releases; business records; informal complaints received; and such internal communications as may be filed by Board members.

(b) All such files shall be open to reasonable public inspection and copying, except material stamped by Board order, "Not Subject to Disclosure." Only the following material may be so stamped by the Board:

(1) information which constitutes a trade secret;

(2) information privileged against introduction in judicial proceedings;

(3) internal communications of the Board;

(4) information concerning secret manufacturing processes or confidential data submitted by any person under the Act.

(c) Except in the case of internal communications, material shall be stamped "Not Subject to Disclosure" only upon written application at the time the material is submitted. An Application for Nondisclosure shall contain the following:

(1) identification of the precise material, or parts of material, for which nondisclosure is sought;

(2) citation of the particular category eligible for nondisclosure into which the material falls;

(3) a concise statement to the reasons supporting nondisclosure.

The Board shall promptly rule on every Application for Nondisclosure and inform the applicant of its decision. An Application for Nondisclosure shall bar public inspection until the Application has been disposed of by the Board.

Internal communications may be so stamped by any Board member, subject to review by the Board.

(d) The Clerk shall maintain a comprehensive index of all Board files open to public inspection.

(e) Reasonable copying facilities shall be made available at the Board offices. Requests by mail shall be honored. The cost of copies shall be \$0.10 per page, plus mailing cost. Notwithstanding the above, the Board reserves the right to contract with a professional reproduction service for any copying that would impose a substantial administrative burden on

the Board, and to charge the actual cost incurred by the Board plus mailing cost.

108 Publications. The Board shall publish at least once each month a newsletter containing notices of meetings and hearings and reports of Board activities, one copy of which shall be sent without charge to anyone requesting it. Copies of the Act and of regulations proposed and in force shall be provided without charge in reasonable quantities. The Board shall publish its decisions and orders and may offer to mail these to subscribers regularly at a reasonable cost.

109 Board Meetings. (a) All decisions of the Board shall be made at meetings open to the public. Three members of the Board shall constitute a quorum, and three affirmative votes shall be required for any final determination of the Board, except in a proceeding to remove a seal under Section 34(d) of the Act.

The Board shall hold at least one meeting a month and shall adopt at the beginning of each fiscal year a schedule of meetings which shall appear at least once in its minutes and newsletter. Special meetings may be called by the Chairman or by any two Board members upon delivery of 24 hours' written notice to the office of each member. Public notice of all special meetings shall be given at least 24 hours in advance of each meeting, by posting at the Board's offices and by mailing or, when time requires, by telephoning to all news media on the Board's mailing list. In emergencies

in which a majority of the Board certifies that exigencies of time require a special meeting to be held immediately, the requirements of notice to news media and 24 hour written notice may be dispensed with, and Board members and media shall receive such notice as is reasonable under the circumstances. Notice of changes in the regular meeting schedule shall be given as in the case of special meetings, and in addition 10 days' notice shall be given by publication in a newspaper of general circulation throughout the state.

The Board shall keep a complete and accurate record of all meetings including the votes of individual members on all adjudications and proposed regulations.

- 110 Informal Complaints. Complaints about particular pollution sources shall be referred to the Clerk, who shall maintain a file and index of such complaints, send a copy or memorandum of the communication to the Agency, notify the complainant of his right to commence an enforcement proceeding, and provide a form on which a formal complaint may be made. The Clerk shall circulate a monthly list of informal complaints to each Board member.

PART II: NONADJUDICATIVE PROCEEDINGS

- 201 Applicability. The rules in this Part apply to all Board proceedings other than adjudicative proceedings.
- 202 Adoption of Regulations. No substantive regulation shall be adopted, amended, or repealed by the Board until after a public hearing within the area

of the State concerned, and in the case of State-wide regulations, until after public hearings held in at least two areas of the State.

- 203 Proposal of Regulations. Ten copies of each proposal for adoption, amendment, or repeal of a substantive regulation shall be filed with the Clerk. Each proposal shall include:

(a) the text of the proposed regulation or amendment; and

(b) a statement of the reasons supporting the proposal, including a short and plain statement of facts known to the proponent which support the proposal, and a short and plain statement of the purpose and effect of the proposal. Where the proposal covers more than one substantive point, the supporting statement shall include such statements in support of each point.

- 204 Authorization of Hearing. If the proposal is made by the Agency, the Institute, or a Board member, or if it is accompanied by a petition signed by at least 200 persons, the Clerk shall assign a docket number to the proposal and distribute copies to each Board member. If the proposal is not made by the Agency or the Institute, the Chairman shall place the matter on the agenda for Board decision whether or not to authorize a hearing. The Board shall authorize a hearing unless it determines that the proposal is devoid of merit, or deals with a subject on which a hearing has been held within the preceding six months, or is not accompanied by an adequate statement of supporting

reasons. If the Board rules against a hearing, it shall enter an order setting forth its reasons for so ordering and shall notify the proponent of its decision. The Board may hold a hearing on any proposal that does not meet the requirements of this section.

If the proposal is made by the Agency or the Institute, or if the Board authorizes a hearing, the Chairman shall designate a Hearing Officer, who shall be an attorney licensed to practice law in Illinois, shall designate an attending Board member, and shall notify the proponent of such designation. A qualified member of the Board may serve as Hearing Officer and need not be attended by another member of the Board.

205 Notice of Hearing. (a) The Hearing Officer, after appropriate consultation with the proponent, shall set a time and place for hearing, which shall be within 60 days after the date on which the proposal was received by the Clerk in cases in which a hearing is required by Rule 204. The Hearing Officer shall give notice as follows, at least 20 days prior to the date of the hearing:

(1) to the proponent, by mail;

(2) to all persons on the Board's mailing list, in the Board's newsletter or by special mailing;

(3) by public advertisement in a newspaper of general circulation in the area of the state affected.

(b) The Board shall make available to any person copies of proposed regulations and supporting statements at the time the hearing date is announced.

206 Authority of Hearing Officer. (a) The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. He shall have all powers necessary to these ends including (but not limited to) the power to:

(1) require prior submission of expert testimony and exhibits in writing;

(2) require all parties to state their position with respect to the proposal;

(3) administer oaths and affirmations;

(4) examine witnesses and direct witnesses to testify;

(5) regulate the course of the hearing;

(6) limit the number of times any witness may testify, limit repetitious or cumulative testimony, and establish reasonable limits on the amount of time each witness may testify.

(b) When prior submission of written testimony is required, ten copies shall be filed with the Clerk, and one additional copy with the Hearing Officer. Rebuttal testimony and exhibits may also be required to be submitted in writing, not earlier than 14 days after the submission of direct testimony and exhibits. Notice of a requirement for prior submission

of written testimony and exhibits shall be given to all persons required to be notified by Rule 205 not later than 20 days prior to the date upon which direct testimony is to be submitted.

- 207 Subpoenas. (a) The Hearing Officer or the Board may issue subpoenas for attendance of a witness at a hearing under this Part. Subpoenas may include a command to produce books, papers, documents or tangible things designated therein and reasonably necessary to resolution of the matter under consideration. Subpoenas shall conform to the requirements of Rule 314 (b) and (c).
- 208 Cross Examination. Cross examination of witnesses by any member of the Board, by counsel for the Board, by the proponent of the regulations under consideration, and by representatives of the Agency, the Institute or the Attorney General shall be permitted. Cross examination by any other person shall be permitted in the discretion of the Hearing Officer. Repetitious cross examination may be limited by the Hearing Officer.
- 209 Written Submissions. Any person may make a written submission on any proposal by filing it with the Clerk, subject to the Hearing Officer's order under Rule 206(a) (i) and (b). The record will remain open for written rebuttal statements for ten days following the close of the hearing, or for such other reasonable time as the Hearing Officer shall direct.
- 210 Record. All testimony shall be recorded verbatim. Before the transcript is filed with the Clerk, the Hearing Officer shall receive corrections from any person, examine the transcript for accuracy and

approve it. The transcript as so approved, all written testimony, all exhibits offered in connection with the hearing, and all written submissions filed with the Clerk under Rule 209 shall constitute the record. The Clerk shall certify the record to the Board when it is complete.

- 211 Revision of Proposed Regulations. After a required rule making hearing, the Board may revise the proposed regulations before adoption in response to suggestion made at the hearing, without conducting a further hearing on the revisions. The Board shall specify the portions of the final form of the regulations that differ from the proposal on which the hearing was held, shall send such statement of revisions to persons heard on the original proposal, and shall give notice to all persons on the Board's mailing list that such a statement is available. Any person may make a written submission concerning any revision by filing it with the Clerk within 10 days after such notice. Such revised regulations shall not be finally adopted until two weeks after such notice.
- 212 Notice of Final Regulations. Any person heard on the original proposal, or on the Board's mailing list, shall be given notice of the Board's final action. The Board shall publish a written opinion stating its reasons supporting the regulations as adopted.
- 213 Other Proceedings. The Board may conduct such other nonadjudicative hearings as may be necessary to accomplish the purposes of the Act. Such other hearings shall be conducted according to these Rules to the extent applicable.

PART III: ENFORCEMENT PROCEEDINGS

301 Applicability. The rules in this Part apply to proceedings to adjudicate alleged violations of the Act or regulations or orders of the Board.

302 Who May Initiate. An enforcement proceeding may be commenced by the Agency or by any person.

303 Parties. (a) The Agency or person initiating an enforcement proceeding shall be designated the complainant. Any adverse party shall be designated the respondent.

(b) Misnomer of a party is not a ground for dismissal, but the name of any party may be corrected at any time.

304 Notice and Complaint. (a) An enforcement action shall be commenced by the service of a notice and complaint upon all respondents and the filing of copies of the notice and complaint with the Clerk.

(b) The notice shall be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date to be set by the Board.

(c) The Complaint shall contain the following:

(1) a reference to the provision of the law or regulations of which the respondents are alleged to be in violation;

(2) a concise statement of the facts upon which the respondents are claimed to be in violation; and

(3) a concise statement of the relief which the complainant seeks.

305 Service. (a) A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by registered or certified mail with return receipt signed by the respondent or his authorized agent. Proof of service of the notice and complaint shall be made by affidavit of the person making personal service, or by properly executed registered mail receipt. Proof of service of the notice and complaint shall be filed with the Board immediately upon completion of service.

(b) All pleadings, motions, and discovery notices, after notice and complaint, shall be served personally or by registered or certified United States mail.

306 Authorization of Hearing. The Clerk shall assign a docket number to each complaint filed, deposit the complaint and notice in the Board's files, and distribute copies to each Board member. If the complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency, and the Chairman shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. The parties, the Agency, and the Attorney General shall be notified and may be heard on this question before the Board. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision.

If the Board rules that the complaint is not duplicitous or frivolous, or if the complaint is filed by the Agency, the Chairman shall designate a Hearing Officer and notify the parties of such designation. The Hearing Officer shall be an attorney licensed to practice law in Illinois, and may be a member of the Board if otherwise qualified.

307 Notice of Hearing. (a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing which date shall be not later than 60 days after the filing of the complaint. The hearing shall be held in the county in which the alleged violation occurred or in such other place as the Hearing Officer shall for stated cause designate. He shall give notice as follows, at least 21 days prior to the date of the hearing:

(1) to the parties, in accordance with Rule 305(b);

(2) to all persons on the Board's mailing list, in the Board's newsletter or by special mailing;

(3) except when the Agency is complainant, by public advertisement in a newspaper of general circulation in the county in which the cause of action arose.

(b) The Agency shall give notice of each complaint and hearing in which it is the complainant not later than 21 days prior to the date on which the hearing is scheduled to the following:

(1) any person who has complained to the Agency with respect to respondent within six months preceding the date of the complaint;

(2) any person in the county in which the alleged offending activity occurred who has requested notice of enforcement proceedings;

(3) the Attorney General, and the State's Attorney in the county in which the alleged offending activity occurred;

(4) the public, by public advertisement in a newspaper of general circulation in the county in which the cause of action arose.

(c) Failure to comply with the notice requirements of this section may not be used as a defense to an enforcement action, but any person to whom notice should have been given may have the hearing postponed if prejudice is shown, upon motion to the Hearing Officer.

308 Motions and Answer. (a) Any respondent may file an answer not later than five days prior to the date of hearing. All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least five days prior to the date of hearing, or on such other date as the Hearing Officer or the Board shall designate.

(b) Unless made orally on the record during a hearing, or unless the Hearing Officer directs otherwise, a motion shall be in writing and shall be accompanied by any affidavits or other evidence relied on and, as appropriate, by a proposed order. At least ten copies of all such motions shall be filed with the Board and at least one copy served on each party.

(c) Within five days after service of a written motion, or such other period as the Board or Hearing Officer may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion. The moving party shall have no right to reply, except as permitted by the Hearing Officer or the Board.

(d) No oral argument will be heard on a motion unless the Hearing Officer or the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(e) A written motion will be disposed of by written order and on notice to all parties.

(f) The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motion to the Board. The Board may decide such motions at any time, but its inaction shall not stay proceeding nor preclude the Board from granting or denying the motion at a later time.

(g) No interlocutory appeal may be taken to the Board from a ruling of the Hearing Officer. When in the judgment of the Hearing Officer prompt decision is necessary to prevent

detriment to the public interest or unusual delay or expense, the Hearing Officer may refer the ruling promptly to the Board, and notify the parties either by announcement on the record or by written notice if the hearing is not in session.

(h) Rulings of the Hearing Officer may be reviewed by the Board after conclusion of the hearing, but will be set aside only to avoid material prejudice to the rights of a litigant. The Hearing Officer, if a member of the Board, may vote upon motions to review his rulings as Hearing Officer.

(i) Unless otherwise ordered, neither the filing of a motion nor the certification of a question to the Board shall stay the proceeding or extend the time for the performance of any act.

(j) A respondent may participate in the proceedings without forfeiting any jurisdictional objection, if such objection is raised at or before the time the respondent files his initial pleading or motion, or, if no pleading or motion is made, before the commencement of the hearings.

309 Consolidation and Severance of Claims: Additional Parties. In the interest of convenient, expeditious, and complete determination of claims, the Hearing Officer may consolidate or sever enforcement, variance, permit or other adjudicative claims involving any number of parties, and may order additional parties to be brought in.

310 Intervention. (a) Upon timely written application, the Hearing Officer shall permit any person to intervene in an enforcement proceeding, subject to the necessity for conducting an orderly and expeditious hearing, when either of the following conditions is met:

(1) when the applicant is so situated that he may be adversely affected by a final order of the Board; or

(2) when an applicant's claim or defense and the enforcement proceeding have a question of law or fact in common.

(b) Ten copies of a petition for intervention shall be filed with the Board and one copy served on each party not later than 48 hours prior to the date set for hearing of the matters set forth in the complaint. The Hearing Officer may permit later intervention when there is good cause for the delay.

(c) An intervenor shall have all the rights of an original party, except that the Hearing Officer may in his order allowing intervention provide that the applicant shall be bound by orders theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require.

311 Continuances. A motion for continuance of any aspect of an enforcement proceeding will be granted only upon a showing of necessity to prevent arbitrary and unreasonable hardship to the party. All motions for continuance must be supported by testimony before the Hearing Officer by the person or persons having knowledge of the facts supporting the motion.

312 Prehearing Conferences. (a) Upon written notice by the Hearing Officer in any proceeding, parties or their attorneys may be directed to appear at a specified time and place for a conference, prior to or during the course of hearing, for the purpose of formulating issues and considering:

(1) the simplification of issues;

(2) the necessity of desirability of amending the pleadings for the purpose of clarification, amplification or limitation;

(3) the possibility of making admissions of certain averments of facts or stipulations concerning the use by either or both parties of matters of public record to avoid unnecessary introduction of proof;

(4) the limitation of the number of witnesses;

(5) the propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

(6) such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) Action taken at the conference shall be recorded in an appropriate ruling, unless the parties enter upon written stipulation as to such matters, or agree to a statement thereof made on the record by the Board or Hearing Officer.

313 Discovery. (a) The following discovery procedures shall be ordered by the Hearing Officer upon the written request of any party where necessary to expedite the proceedings, to ensure a clear or concise record, to ensure a fair opportunity to prepare for the hearing, or to avoid surprise at the hearing:

(i) production of documents or things;

(ii) depositions;

(iii) interrogatories.

The Hearing Officer shall restrict such discovery where necessary to prevent undue delay or harassment.

(b) The Hearing Officer shall order the following discovery upon written request of any party:

(i) list of witnesses who may be called at the hearing;

(ii) reasonable inspection of premises by experts.

(c) Any person, including a party, who is deposed, interrogated or required to submit documents or things under these rules may be examined regarding any matter, not privileged, which is relevant to the subject matter of the pending case, or which may lead to the discovery of such relevant information.

(d) All depositions and interrogatories taken pursuant to this rule shall be for purposes of discovery only, except as herein provided. Such depositions and interrogatories may be used for purposes of impeachment and as admissions of the deposed or interrogated party. Upon application to the Hearing Officer either before or after the taking of such deposition or interrogatories and upon a showing that at the time of the hearing, the party deposed or interrogated will not be available to participate in the hearing because of death, age, sickness, infirmity, absence from the country or other exceptional circumstances, the Hearing Officer may order that the deposition or interrogatories be used as evidence in the hearing

313½ Admissions. (a) Request for Admission of Fact. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.

(b) Request for Admission of Genuineness of Document. A party may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the document shall be served with the request unless copies have already been furnished.

(c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of

which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the Hearing Officer upon prompt notice and motion of the party making the request.

(d) Effect of Admission. Any admission made by a party pursuant to request under this rule is for the purpose of the pending action only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

(e) Expenses of Refusal To Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, he may apply to the Hearing Officer for an order requiring the denying party to pay him the reasonable expenses incurred in making the proof, including reasonable attorney's

fees. Unless the Hearing Officer finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made. (As adopted November 11, 1971).

314 Subpoenas. (a) Upon application to the Clerk by any party, or on motion of the Hearing Officer or the Board, the Hearing Officer or the Board shall issue a subpoena for attendance at deposition of a hearing, which may include a command to produce books, papers, documents, or tangible things designated therein and reasonably necessary to resolution of the matter under consideration, subject to the limitations on discovery prescribed by these Rules.

(b) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.

(c) The Hearing Officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive.

315 Authority of Hearing Officer. The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. He shall have all powers necessary to these ends, including (but not limited to) the power to:

- (1) administer oaths and affirmations;
- (2) issue discovery orders;
- (3) rule upon objections to subpoenas and discovery orders;
- (4) rule upon offers of proof and receive evidence, subject to rule 320;
- (5) regulate the course of the hearings and the conduct of the parties and their counsel therein;
- (6) hold pre-hearing conferences for settlement, simplification of the issues, or any other proper purposes;
- (7) consider and rule upon as justice may require, motions appropriate to an adjudicative proceeding, subject to Rule 308;
- (8) interrogate witnesses.

316 Authority of Board Members and Counsel. Any Board member, or counsel to the Board, may advise the Hearing Officer and may interrogate witnesses, but shall not have authority to rule on objections or motions or to overrule the Hearing Officer during the hearing.

317 Conduct of the Hearing. All hearings under this part shall be public, and any person may submit written statements relevant to the subject matter of the hearing. Any person submitting such a statement shall be subject to cross-examination by any party. If such person is not available for cross-examination upon timely request, the written statement shall be stricken from the record. The Hearing Officer

may permit any person to offer oral testimony whether or not such person is a party to the proceedings.

318 Order of Enforcement Hearings. The following shall be the order of all enforcement hearings, subject to modification by the Hearing Officer for good cause:

(a) Presentation, argument and disposition of motions preliminary to a hearing on the merits of the matters raised in the complaint.

(b) Presentation of opening statements.

(c) Complainant's case in chief.

(d) Respondent's case in chief.

(e) Complainant's case in rebuttal.

(f) Statements from interested citizens, if authorized by the Hearing Officer.

(g) Complainant's opening argument, which may include legal argument.

(h) Respondent's closing argument, which may include legal argument.

(i) Complainant's closing argument, which may include legal argument.

(j) Presentation and argument of all motions prior to final order.

319 Default. Failure of a party to appear on the date set for hearing, or failure to proceed as ordered by the Board, shall constitute a default. The Board shall thereupon enter such final order and such evidence as it shall, upon motion, receive.

320 Evidence. (a) The Hearing Officer shall receive evidence which is admissible under the law of the rules of evidence of Illinois pertaining to civil actions. In addition, the Hearing Officer may receive material, relevant evidence which would be relied upon by a reasonably prudent person in the conduct of serious affairs which is reasonably reliable and reasonably necessary to resolution of the issue for which it is offered; provided that the rules relating to privileged communications and privileged topics shall be observed.

(b) The Hearing Officer shall exclude immaterial, irrelevant, and repetitious evidence.

(c) When the admissibility of disputed evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.

321 Official Notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Board.

322 Viewing of Premises. Upon motion of any party or upon the Hearing Officer's own motion, the Hearing Officer and any Board Members present may view the premises in question, but no such viewing by less than the whole Board shall be made if any party objects. No stenographic record need be taken of what transpires at the viewing.

323 Examination of Adverse Party or Agent. Upon the hearing of any action any party thereto or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents or foreman

of any party to the action, may be called and examined as if under cross-examination at the instance of any adverse party. The party calling for the examination is not concluded thereby but may rebut the testimony thus given by countertestimony and may impeach the witness by proof of prior inconsistent statements.

324 Hostile Witnesses. (a) If the Hearing Officer determines that a witness is hostile or unwilling, he may be examined by the party calling him as if under cross-examination.

(b) The party calling an occurrence witness, upon the showing that he called the witness in good faith and is surprised by his testimony, may impeach the witness by proof of prior inconsistent statements.

325 Admission of Business Records in Evidence. Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business," as used in this rule, includes business, profession, occupation, and calling of every kind.

326 Compelling Appearance at Hearing. The appearance at the hearing of a party or a person who at the time of the

hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require production at the hearing of documents or tangible things.

327 Amendment and Variance. Proof may depart from pleadings and pleadings may be amended to conform to proof, so long as no undue surprise results that cannot be remedied by a continuance.

328 Transcript. (a) The Board shall provide or arrange for a court reporter who shall record the entire hearing, which shall be transcribed. Seven copies of the transcript shall be filed with the Board within fifteen days following the close of the hearing.

(b) Any person may suggest corrections in the transcript, as filed. Corrections shall be determined by the Hearing Officer.

(as amended September 26, 1972)

329 Record. The transcript of the hearing approved by the Hearing Officer and all exhibits offered in connection with the hearing shall constitute the record. The Clerk shall certify the record to the Board when it is complete.

330 Briefs and Oral Argument. The parties may submit written briefs to the Board within ten days after the close of the hearing, or such other reasonable time as the Hearing Officer shall determine consistent with the Board's responsibility for expeditious decision. Upon request at the time of submission of briefs or on its own motion, the Board may permit oral argument by the parties before the whole Board.

331 Content of Decisions. The Board shall prepare a written decision for any action taken which shall include:

(a) findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record;

(b) a final order or determination.

The Clerk shall assign a number to the decision, shall publish the decision with the vote of each Board member recorded, shall notify the parties of such decision and order by registered or certified mail, and shall notify all persons of such decision or order who were required to be notified of the hearing from which the order arose.

332 Contents of Order. A Board order may include any or all of the following:

(a) a direction to cease and desist from violations of the Board's rules and regulations;

(b) the imposition of money penalties not to exceed \$10,000 for said violation and an additional penalty of not to exceed \$1,000 for each day during which violation continues;

(c) denial or revocation of a variance;

(d) the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed;

(e) revocation of the permit;

(f) any other order that may be appropriate.

333 Settlement Procedure. No case pending before the Board shall be disposed of or modified without an order of the Board. All parties to any case in which a settlement or compromise is proposed shall file with the Board a written statement, signed by the parties, or their authorized representatives, outlining the nature of, the reasons for and the purposes to be accomplished by the settlement. Within a reasonable time after receipt of the written statement, the Board shall enter an appropriate order. The Board shall have the right to require that any or all of the parties of such case appear before the Board to answer inquiries of the Board relating to the proposed disposition.

PART IV: VARIANCES

401 Petition. (a) A variance proceeding shall be commenced by filing a petition for variance with the Agency and by filing ten copies of the petition with the Clerk of the Board. The petition shall contain the following:

(1) a concise statement of the facts upon which the variance is requested, including a description of the business or activity in question; the quantity and type of raw materials processed; an estimate of the quantity and type of contaminants discharged; a description of existing and proposed equipment for the control of discharges; and a time schedule for bringing the activity into compliance;

(2) a concise statement of why the petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, including a description of the costs that compliance would impose on the petitioner and others and of the injury that the grant of the variance would impose on the public; and

(3) a clear statement of the precise extent of the relief sought.

(b) The complaint may be accompanied by such affidavits or other proof as the petitioner may submit in order to make it possible for the Board if it so decides, to dispose of the matter without a hearing.

402 Notice. (a) The Board shall give notice of all variance petitions filed to all persons on its mailing list, in the Board's newsletter or by special mailing, within ten days after the petition is filed.

(b) The Agency shall give written notice of all such petitions to any person in the county in which the installation or property for which variance is sought is located who has in writing re-

requested notice of variance petitions, and shall publish notice of such petitions in a newspaper of general circulation in such county, within ten days after the petition is filed.

403 Investigation and Recommendation. (a) After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Agency shall within 21 days after the filing of the petition make a recommendation to the Board as to the disposition of the petition. The recommendation shall include:

(1) a description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;

(2) a statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition;

(3) allegations of any other facts the Agency believes relevant to the disposition of the petition;

(4) the Agency's assessment of the costs that compliance would impose on the petitioner and on others and of the injury that the grant of the variance would impose on the public; and

(5) the Agency's conclusion as to what disposition should be made of the petition.

(b) The Agency shall serve a copy of its recommendation on the petitioner in accordance with Rule 305(b).

404 Objections to Petition. Any person may file with the Clerk, within twenty-one days after the filing of the petition,

a written objection to the grant of the variance. Such objection may or may not be accompanied by a petition to intervene under Rule 310. A copy of such objection shall be mailed by the Clerk to the petitioner and to the Agency.

405 Authorization of Hearing. (a) The Clerk shall assign a docket number to each petition filed, deposit the petition in the Board's files, and distribute copies to each Board member. Copies of objections to the petition and of Agency recommendations shall be filed and distributed as received.

(b) If no objection is made by the Agency or by any other person to the grant of the variance within 21 days after the filing of the petition, the Chairman shall place the matter on the agenda for Board determination whether or not to hold a hearing.

The Board shall authorize a hearing unless it determines either:

(1) that even if all the facts alleged in the petition are true, the petitioner is not entitled to a variance; or

(2) that the petitioner has shown from affidavits or other proof that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship.

No variance shall be granted, with or without hearing, without adequate proof by the petitioner that compliance would impose an arbitrary or unreasonable hardship.

If the Board decides not to hold a hearing it shall pass upon the petition and shall prepare an opinion stating its reasons both for the grant or denial of the petition and for its decision not to hold a hearing.

(c) The Board may vote to authorize a hearing without waiting for the expiration of the 21 days during which objections may be filed, but shall not rule upon the petition without hearing until the 21 days have elapsed.

(d) If an objection is made to the grant of the variance within 21 days after the filing of the petition, or if the Board authorizes a hearing, the Chairman shall designate a Hearing Officer in accordance with Rule 306.

(e) When the Agency has recommended that the variance be granted, the Board may appoint counsel to present a case against the petitioner.

406 Notice of Hearing. The Hearing Officer after appropriate consultation with the parties, shall set a time and place for hearing and shall give notice as follows, at least 21 days prior to the date of the hearing;

(a) to the petitioner, the Agency and anyone who has filed an objection to the petition, in accordance with Rule 305(b);

(b) to all persons on the Board's mailing list, in the Board's newsletter or by special mailing.

The hearing shall be set for a date no later than 60 days after the filing of the petition. Any request by the petitioner for a continuance shall constitute a waiver of the right to a deci-

sion within 90 days under Section 38 of the Act, for the period of the continuance.

407 Proceedings. Proceedings upon a petition for variance shall be in accordance with Part III of these Rules, except as provided in this Part.

408 Decision. The Board shall render a final decision upon the petition within ninety days after the filing of the petition, except that time included in a continuance granted at the request of the petitioner shall not be counted. When exigencies of time require, the Board may delay the filing of an opinion until not more than 30 days after the filing of its final order under this section.

409 Variance from New Regulation. If any person files a petition for variance from a regulation within 20 days after the effective date of such regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition. The Board may hold a hearing upon said petition five days from the notice of such hearing, and in all other respects the Rules in this Part shall apply to the extent they are consistent with the hearing date set by the Board.

410 Transcripts. In any proceeding brought pursuant to this Part IV, where a hearing has been ordered by the Board, the Petitioner shall furnish to the Board within 15 days following the completion of said hearing, at its own cost, seven copies of a complete stenographic transcript of the proceedings of the hearing.

Upon petition and good cause shown the Board may assume such cost. Any delay in the filing of the transcript shall constitute a waiver of the right to a decision within 90 days under Section 38 of the Act, for the period of the delay.

(As adopted January 17, 1972)

PART V: PERMITS

501 Setting Standards. The Board shall prescribe standards for the issuance of permits in accordance with the procedures set forth in Part II of these Rules.

502 Denial of Permit. (a) An applicant for a permit denied by the Agency who seeks to contest the denial shall file a petition for a hearing before the Board. The petition shall include:

(1) Citation of the particular standards under which a permit is sought;

(2) a complete and precise description of the facility, equipment, vehicle, vessel or aircraft for which a permit is sought, including its location;

(3) a complete description of contaminant emissions and of proposed methods for their control; and

(4) such other matters as may be necessary to demonstrate that the activity for which the permit is sought will not cause a violation of the Act or of the Regulations.

(b) The proceedings shall be in accordance with the Rules set forth in Part III of these Rules.

(c) The Clerk shall give notice of the petition and hearing in accordance with Part III.

(d) The Agency shall appear as respondent in the hearing and shall immediately, upon notice of the petition, file with the Board the entire Agency record of the permit application, including:

(1) the application;

(2) correspondence with the applicant;

(3) the denial.

503 Permit Revocation. Any person may file a complaint seeking revocation of a permit on the ground that it was improperly issued by the Agency, or seeking a cease-and-desist order against the activity described in the permit on the ground that it would cause a violation of the Act, of the Regulations, or of a Board order. Such a complaint shall be commenced in accordance with Part III, and Part III of these Rules shall govern the proceeding.

504 Nuclear Facilities Permits. (a) In addition to such permits as may be required to be obtained from the Agency, a permit from the Board is required for the construction or operation of a new nuclear steam-electric generating facility or nuclear fuel reprocessing plant or for an increase in the capacity of an existing facility or plant, under Title VI-A of the Act. An applicant for such a permit shall file

with the Clerk ten copies of an application containing:

(1) a complete and concise description of the facility or plant for which the permit is sought, including its location;

(2) a complete description of contaminant emissions from the facility or plant and of proposed methods for their control;

(3) the environmental feasibility report required by the Act;

(4) such other matters as may be necessary to demonstrate that the construction and operation of the facility will not cause a violation of the Act or of the Regulations.

(b) The Clerk shall docket and file the application and distribute copies to each member of the Board. The Chairman shall designate a Hearing Officer, who shall set a date for hearing and shall give 21 days notice to the Agency, to the Attorney General, and to any governmental unit having jurisdiction over any domestic water supply in this State that might be affected by the proposed construction or operation. Notice shall also be given to all persons on the Board's mailing list in the Board's newsletter or by special mailing.

(c) Proceedings shall be in accordance with Part III of these Rules except as provided in this Part.

505 Transcripts. In any proceeding brought pursuant to this Part V, where a hearing has been ordered by the Board, the

Petitioner shall furnish to the Board within 15 days following the completion of said hearing, at its own cost, seven copies of a complete stenographic transcript of the proceedings of the hearing. Upon petition and good cause shown the Board may assume such cost. Any delay in the filing of the transcript shall constitute a waiver of the right to a decision within 90 days under Section 40 of the Act, for the period of the delay.

(As adopted January 17, 1972.)

PART VI: CANONS OF ETHICS

601 Financial Disclosure. Within 60 days after appointment or on or before November 1, 1970, whichever is later, and on or before each July 1 thereafter, each Board member shall file with the Department of Personnel a complete written financial disclosure under oath which shall be available for public inspection at the office of the Department of Personnel. Such disclosure shall contain:

(1) all investments and intangible personal property owned by the member or by his spouse or minor children residing in his household, including but not limited to stocks, bonds, bank accounts and trust interests, by amount and by name of company;

(2) all real estate directly or beneficially owned by the member or by his spouse or minor children residing in his household, including its approximate value.

(3) all income or gifts (except those received from the immediate

family of the member) received by the member or by his spouse or minor children residing in his household during the calendar year preceding the filing of the disclosure and in the calendar year in which the disclosure is filed, by source and amount;

(4) all memberships on Boards of Directors of, or office held in, incorporated and unincorporated organizations, and partnerships and positions of trust or fiduciary responsibility;

(5) all indebtedness, loans, obligations, or financial promises of any kind, exceeding \$500.00, of the member or of his spouse or minor children residing in his household, by creditor and amount.

602 Ex parte Contacts. (a) No member, hearing officer, or employee of the Board shall communicate ex parte, directly or indirectly, with any person not employed by the Board, with respect to any adjudicative proceeding pending before the Board. Ex parte contacts with respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to possible rule-making proceedings, but caution shall be exercised by Board members and employees to avoid prejudging the merits of any potential individual case. Nothing in this Rule shall preclude Board members, hearing officers or employees from receiving informal complaints about individual pollution sources in accordance with Rule 110, or forbid such administrative contacts as would be appropriate for judges and other judicial officers.

(b) Board members and employees shall make every reasonable effort to assure that any ex parte communications with respect to nonadjudicative proceedings become a matter of public record, in order that information on which the Board bases its decisions can be subject to scrutiny and to rebuttal. Whenever practicable, communications shall be in writing and addressed to the Board rather than to individual members.

603 Improper Publicity. (a) Hearings should be conducted with fitting dignity and decorum. The Hearing Officer may forbid the taking of photographs or the broadcasting or televising of all or part of the proceedings while the hearing is being conducted if he finds that such activities detract from the dignity of the proceedings or unduly distract participants and witnesses in giving testimony.

(b) Parties in proceedings brought before the Board shall at all times conduct themselves with the same degree of dignity and respect that they would before a Court.

(As adopted November 11, 1972).